was followed by disaffiliation action at the local level. For example, as the *A & P* decision further shows (p. 15, *infra*), Local 492, the local having jurisdiction over Nabisco's Philadelphia and York plants, mailed notice of a general membership meeting to all local shops, to consider what action, if any, the local should take in view of the recent upheavals involving its national affiliate. At this meeting, attended by a substantial number of the Local's members, those present unanimously adopted a resolution disaffiliating from BCW and its Local 492, and directing all officers to retain their offices, protect the Local's assets, and apply to the new International Union, ABC, for a charter. See also R. 18, n. 3, R. 21, n. 3, R. 23, n. 2, R. 25, n. 2.

In these circumstances, it was reasonable to give Nabisco's employees a chance to redetermine their bargaining representative, even though a contract with petitioner was still outstanding.

2. The petitioner misconceives the basis for the Board's rule in the case of schisms in contending (Pet. 8–14) that it is applicable only where an international union has been expelled from the AFL–CIO, and thus discriminates against unaffiliated unions in violation of Section 9(c)(2) of the Act.* Although it is true that the Board has found a schism warranting the holding of an immediate election in the

* In relevant part, this Section provides that:

In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought * * *.

situation where an international union has been expelled from the AFL–CIO,[7] this has not been the only situation in which such a schism has been found. In *Wade Manufacturing Company*, 100 NLRB 1135, for example, a schism warranting the holding of an election notwithstanding an existing contract was found even though there had been no expulsion. There, as a result of policy differences which developed at the 1952 national convention of the Textile Workers Union of America, CIO, one of its Joint Boards, which served as the policy-making body for a number of locals, voted overwhelmingly to leave TWUA and affiliate with another international, United Textile Workers of America, AFL. This was, in turn, followed by disaffiliation action at the local level. The Board ordered an election because "as the result of a schism in the ranks of the Intervenor [TWUA] directly affecting the employees at the Employer's plant, conflicting claims of the Petitioner [UTW] and the Intervenor have been made, causing serious confusion in the bargaining relationship between the Employer and the representative of its employees" (*Id.*, at 1138).[8] Similarly, the Board's re-

[7] See *A. C. Lawrence Leather Company*, 108 NLRB 546, and the instant cases.

[8] The schism within the TWUA involved in *Wade*, *supra*, also affected other plants, leading to a series of similar directions of election. *Erwin Mills, Inc.*, 101 NLRB 316; *Franklin Throwing Company*, 101 NLRB 153; *Bryant Finishing Co., Inc.*, 101 NLRB 422; *Bellman Brook Bleachery Company*, 101 NLRB 297. Moreover, the fact that the Board's schism doctrine is longstanding and not dependent upon the expulsion of an international from a parent federation is further shown by its application to the 1939 intra-union split in the United Auto

cent restatement of the rule in *Hershey Chocolate Corp.*, 121 NLRB No. 124 (see n. 5, *supra*, p. 7), makes plain that "any realignment affecting an international union or federation of unions, resulting from a policy conflict" (mimeo dec., p. 9), followed by related action at the local level, would constitute the type of schism warranting the holding of an election notwithstanding an existing contract.

In sum, it is apparent that the Board's rule as to schisms does not discriminate against unaffiliated unions, for it turns, not on whether a union is affiliated with a parent federation or has been expelled therefrom, but rather on whether there has been a basic intra-union conflict which has muddied the "representation waters," causing a change at the international level and disruption at the local level. Although a frequent cause of this disruption is the expulsion of an international union from a parent federation, the same condition may result from other circumstances as well. The Board's rule is the same whatever the cause, for it is the effect on the bargaining relationship and not the cause of the disruption which is relevant for the Board.

3. Equally insubstantial is petitioner's contention (Pet. 14–15) that the Board, in any event, lacks authority to direct elections during the term of an otherwise valid collective bargaining agreement. Petitioner acknowledges that the Board's rule that it will not ordinarily hold an election during the term of a

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Workers, which resulted in the formation of the UAW-AFL. *Brewster Aeronautical Corp.*, 14 NLRB 1024; *Midland Steel Products Co.*, 17 NLRB 936.

collective bargaining contract is authorized by the Act, but fails to recognize, as the case which it relies on specifically adds, that this policy also includes the corollaries thereto, *i.e.*, the circumstances under which the contract would be "lifted." *Fay* v. *Douds*, 172 F. 2d 720, 724 (C.A. 2). Hence, as the authorities cited n. 4, *supra*, p. 6, have uniformly held, the Board has power to order elections in the face of an outstanding contract where, as here, the contract can no longer be said to stabilize bargaining relationships and a redetermination of the bargaining representative would thus effectuate the policies of the Act.[*]

Nor is this analysis impaired by the cases (Pet. 15) which indicate that the Board may not police collective bargaining contracts and strike down contractual provisions which do not contravene the unfair labor practice sections or other basic policies of the Act. In deciding whether to direct an election in the face of an outstanding contract, the Board does not nullify or set aside the contract as such, but merely decides whether the contract should preclude the employees

[*] In amending the Act, Congress evidenced an intention not to alter the Board's policies as to when an existing contract bars an election. See Leg. Hist. of the Labor-Management Relations Act, 1947 (G.P.O., 1948), pp. 431, 554. Moreover, Section 8(d) of the amended Act expressly confirms the Board's authority to conduct a representation election in the midst of an otherwise valid contract. The latter part of that Section provides that the preceding limitations on the right to strike during the life of a collective bargaining contract shall be "inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or has ceased to be the representative * * *."

from redetermining their bargaining representative. Whether and to what extent the contract remains in effect after such action is a question left for future proceedings and negotiations between the parties.[10]

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1959.

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[10] See *Modine Mfg. Co.* v. *I.A.M.*, 216 F. 2d 326 (C.A. 6); *American Seating Co.*, 106 NLRB 250; *Boston Machine Works Co.*, 89 NLRB 59; Cox, *The Legal Nature of Collective Bargaining Agreements*, 57 Mich. L. Rev. 1, 8–14.

APPENDIX

120 N.L.R.B. No. 91

United States of America

Before the National Labor Relations Board

Case No. 4–RC–3552

THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, EMPLOYER

And

LOCAL 492, AMERICAN BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION, AFL–CIO, PETITIONER

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Bernard Samoff, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.[1]

[1] The hearing officer permitted Bakery and Confectionery Workers International Union of America, herein called Bakery Workers, and its Local 492, herein called Local 492, to intervene on the basis of Local 492's current contract with the Employer covering the employees involved. The Petitioner ob-

3. The Petitioner seeks an election among the production employees of the Employer's Philadelphia, Pennsylvania, bakery. The Employer and the Intervenors contend that the contract of Local 492 (the intervening local) is a bar. The Petitioner contends that the contract is not a bar because a schism has occurred, and because Local 492 is defunct.

Local 492 is an amalgamated local union which represents employees of 13 employers in Pennsylvania. Originally a direct affiliate of AFL, Local 492 later was chartered by Bakery Workers, which eventually became affiliated with AFL–CIO through the merger of those two parent organizations. Local 492 was recognized by the Employer as the representative of the employees herein involved in 1940 and has executed successive contracts covering them since that time. The most recent contract, which is asserted as a bar, is effective from January 1, 1957, until October 1, 1958.

After proceedings initiated by it as the result of charges of corruption preferred against Bakery Workers' officials in March 1957, the AFL–CIO convention voted on December 9 to expel Bakery Workers, effective December 12, on grounds of corruption. On December 12, AFL–CIO chartered American

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jects to the intervention of Local 492, and contends it is not a labor organization, on the ground that it is defunct. The Petitioner also objects to the intervention of Bakery Workers on the ground that it is not a party to the contract. The objections are overruled. We find, for the reasons stated below, that Local 492 is not defunct. As it admits employees to membership and negotiated the current contract, we find that it is a labor organization; and as a party to the contract, it is entitled to intervene. Bakery Workers, as the International with which the contracting Local is affiliated, and which is administering the affairs of Local 492 through a trustee, also has a sufficient interest to be entitled to intervene.

Bakery and Confectionery Workers International Union, herein called American Bakery Workers.[2]

Local 492, pursuant to notices previously mailed to all member shops, called a special meeting of its members on December 11. Approximately 400 of its 2600 members attended,[3] and unanimously adopted a resolution disaffiliating from Bakery Workers for reasons related to its expulsion from AFL–CIO; directing all officers to retain their offices, protect the Local's assets, and apply to the new international, American Bakery Workers, for a charter. The charter was subsequently granted. A majority of Local 492's members have signed a petition endorsing the action taken at the meeting, 2183 members have signed cards disaffiliating from Bakery Workers and authorizing the Petitioner to represent them, and 2107 have signed the Petitioner's check-off cards. Of the Employer's average complement of 230 to 260 employees, 245 have signed cards disaffiliating from Bakery Workers and authorizing the Petitioner to represent them. All members of the shop committee at the instant plant have defected to the Petitioner. The Petitioner has advised the Employer of the foregoing change in affiliation, and, through the shop committee at the instant plant, has taken over administration of the contract, processing grievances at weekly meetings with management.

Bakery Workers has removed the defecting officers of its Local 492 and has appointed a trustee and assistant trustees for the Local. The trustee has established a new office and has held meetings of small

[2] The charter was granted to a dissident group within Bakery Workers, led by 5 officers of the International known as "Committee to Preserve Integrity in the Bakery and Confectionery Workers International Union of America, AFL–CIO."

[3] The usual attendance at Local 492 membership meetings was 200 to 275.

groups of employees, some of whom signed cards declaring their loyalty to Bakery Workers. Although the trustee has not handled any grievances, he informed the Employer of his appointment and claims to be ready, willing, and able to administer the contract. The Employer is holding checked-off dues in escrow.

In the light of the foregoing, it is apparent the Bakery Workers Local 492 is not defunct. Even though most of its members and all its officers have defected, a trustee and assistant trustees appointed by Bakery Workers are actively carrying on its affairs from a new office, have informed the Employer to that effect, and have contacted members and held meetings. Some of Local 492's members have remained loyal. It is willing to, and capable of, administering its contract.[4]

However, the Board has held, under circumstances similar to those existing here, that the expulsion of an international union from its parent organization, coupled with disaffiliation action at the local level for reasons related to the expulsion, disrupts and confuses the established bargaining relationships between the employer and the representative of the employees, creating a schism which warrants the holding of an election despite the existence of a contract between such representative and the employer.[5] A departure from this principle is not warranted by the fact that the disaffiliation action may have violated the constitutions and by-laws of Local 492 and Bakery Work-

[4] *The Youngstown Steel Door Company*, 116 N.L.R.B. 986. Cf. *John Deere Plow Works of Deere & Co.*, 115 N.L.R.B. 923, p. 925.

[5] *A. C. Lawrence Leather Company*, 108 N.L.R.B. 546.

ers,[6] or did not meet all the formalities which the Board in some cases has required.[7] We therefore find that a schism exists[8] and that the contract does not

[6] *Globe Forge, Inc.*, 115 N.L.R.B. 862. We find no merit in the Intervenors' contention that the disaffiliation-affiliation action was directed by a rival union engaged in raiding activities. It is clear that the movement was led by a dissident group within the Bakery Workers Union itself and not by a raiding, outside union (see fn. 2 above).

[7] In view of the nationwide publicity surrounding the Bakery Workers' expulsion proceedings, the efforts of both factions in the Union to explain their positions to all locals and their members, and the discussions of these matters by the members at meetings prior to December 12, we find without merit the Intervenors' contention that the notice sent to all shops for posting, announcing the December 11 meeting of Local 492, did not adequately advise the members of the purpose of the meeting. Written on Local 492's letterhead, the notice stated: "Attention. Attention. To All Members. There will be a general membership meeting at the Dobbins Vocational School, 22nd & Lehigh Avenue, Philadelphia, Penna. on Wednesday, December 11, 1957, at 8:00 P.M. Matters of great importance to everyone will be discussed and voted upon. Therefore, everyone is urged to attend this important meeting. Fraternally yours, John D. Nicola, Secretary-Treasurer." See *A. C. Lawrence Leather Company*, 113 N.L.R.B. 60; *Empire Zinc Division, The New Jersey Zinc Company*, 108 N.L.R.B. 1662. The Local 492 disaffiliation meeting occurred on December 11, one day before Bakery Workers' expulsion from AFL–CIO became effective on December 12. However, the meeting occurred 2 days after the AFL–CIO convention voted for expulsion on December 9. We therefore find, contrary to the contention of the Intervenors, that the Local 492 disaffiliation was not premature.

[8] In view of our decision herein, we find it unnecessary to, and therefore do not, pass upon the Petitioner's other objections to the contract. Nor do we pass upon the obligations of the parties with respect to the contract, as requested by the Employer. *John Deere Plow Works of Deere & Co.*, 115 N.L.R.B. 923.

bar an election at this time.[9] Accordingly, we find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c) and Section 2 (6) and (7) of the Act.[10]

4. In accord with the agreement of the parties, we find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. All production employees at the Employer's bakery, Ridge Avenue and Sedgely Streets, Philadelphia, Pennsylvania, excluding drivers, salaried employees, confidential employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION

[Omitted]

[9] The Petitioner's alternative request that the Board declare that it has succeeded to Local 492's contract and dismiss the petition is denied. *Prudential Insurance Company*, 106 N.L.R.B. 237, relied on by the Petitioner, is inapposite. In that case an employer petition was dismissed on motion of the union to which the contract had been assigned in connection with a disaffiliation action, the Board finding that the union had succeeded to the contract. Here, there was no assignment. Moreover, it is clear that the Petitioner may not, after raising a question concerning representation by filing a petition, thereafter assert what it alleges to be its own contract as a bar. *Puerto Rico Cement Corp.*, 97 N.L.R.B. 382. The other cases cited by the Petitioner are inapposite because they did not involve schism situations.

[10] We find no merit in the Intervenors' contention that a free election cannot be held because of the Petitioner's seizure of Local 492's assets. There is no indication that the assets have been disbursed to the Petitioner's advantage, as was done in *Kearney & Trecker Corp.* v. *N.L.R.B.*, 210 F. 2d 852 (C.A. 7), relied on by the Intervenors.

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